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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LATRICE STARVEL MURRAY,

Defendant and Appellant.

B240207

(Los Angeles County
Super. Ct. No. TA112263)

APPEAL from a judgment of the Superior Court of Los Angeles County, Pat Connolly, Judge. Reversed in part; affirmed in part.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews, Roberta L. Davis and Zee Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant, Latrice Starvel Murray, of petty theft with a prior conviction. (Pen. Code,¹ § 666.)² Defendant's three-year sentence was doubled under sections 667, subdivisions (b) through (i) and 1170.12, and enhanced one year pursuant to section 667.5, subdivision (b). Defendant's total sentence is seven years. Although she admitted the truth of four prior convictions allegations, defendant argues: she never admitted that she served time in state prison for any of those convictions; she did not admit she remained free of prison custody for a period of five years; and the prosecution offered no evidence to that effect. We disagree.

The information alleged defendant had served a prior separate prison term within the meaning of section 667.5, subdivision (b): “It is further alleged as to count(s) 1 pursuant to Penal Code section 667.5(b) that the defendant(s), LATRICE STARVEL MURRAY, has suffered the following prior conviction(s): [¶] [a petty theft conviction on January 19, 2005, in Los Angeles Superior Court case No. LA047400] [¶] and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.” Defendant, who was represented by counsel, admitted the prior conviction allegation: “[F]irst, the allegation that you suffered a prison prior, within the meaning of Penal Code section 667.5(b), in case L like lamb, A like apple, 047400, for a violation of Penal Code section 666, and a conviction date of . . . January 19, 2005. [¶] . . . [¶] [Deputy District Attorney Richard J.] Dreiling: Are you willing to . . . stipulate that you

¹ All further statutory references are to the Penal Code.

² At the time defendant committed the present offense, section 666 read: “Every person who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of petty theft, then the person convicted of that subsequent offense is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.” (Stats. 2000, ch. 135, § 134.)

suffered that prior conviction? [¶] The Defendant: Yes. [¶] Mr. Dreiling: Does counsel join? [¶] [Deputy Public Defender Delia] Metoyer: Yes.”

We consider defendant’s admission in light of the totality of the circumstances. (*People v. Carrasco* (2012) 209 Cal.App.4th 715, 725; see *People v. Mosby* (2004) 33 Cal.4th 353, 356.) Under the totality of the circumstances, defendant admitted she served a prior separate prison term within the meaning of section 667.5, subdivision (b). (See *People v. Ebner* (1966) 64 Cal.2d 297, 303-304; *People v. Carrasco, supra*, 209 Cal.App.4th at pp. 724-725; *People v. Jones* (2009) 178 Cal.App.4th 853, 859, fn. 3; *People v. Cardenas* (1987) 192 Cal.App.3d 51, 61; *People v. Welge* (1980) 101 Cal.App.3d 616, 623-624.)

The trial court orally imposed “a [deoxyribonucleic acid] fee of \$20.” The abstract of judgment includes a “[deoxyribonucleic acid] fine of \$20.00 per [Government Code section] 76104.7.” This was error. No deoxyribonucleic acid penalty can be imposed on: a restitution fine (§ 1202.4, subd. (e)); a parole revocation restitution fine (§ 1202.45); a court security fee (§ 1465.8, subd. (b)); or a court facilities assessment (Gov. Code, § 70373, subd. (b)). (See *People v. Valencia* (2008) 166 Cal.App.4th 1392, 1395-1396.) Nor can the order be construed as entered under section 295, subdivision (j); no section 1203.1c, 1203.1e, or 1203.1m cost order was imposed. The \$20 deoxyribonucleic acid fine must be reversed.

The \$20 deoxyribonucleic acid fine is reversed. In all other respects, the judgment is affirmed. Upon remittitur issuance, the clerk of the superior court shall: amend the abstract of judgment to delete the deoxyribonucleic acid fine; and deliver a copy of the

amended abstract of judgment to the Department of Corrections and Rehabilitation.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.